Supreme Court, U.S.
FILED

001855 JUN 13 2001

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

CHEVRON U.S.A. PRODUCTION CO.,

Petitioner,

versus

ROBERT MYERS,

Respondent.

On The Petition For Writ Of Certiorari To The Fifteenth Judicial District Court, Parish Of Lafayette, State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

NORMAN C. SULLIVAN, JR.
(*COUNSEL OF RECORD*)
GELPI SULLIVAN CARROLL
400 Poydras Street, Suite 2525
New Orleans, Louisiana 70130
Telephone: (504) 524-9714

Attorney for Petitioner,
Chevron U.S.A. Production Co.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

HIPP

QUESTIONS PRESENTED

1. Should a seaman filing a complaint in state court under the general maritime law be able to avoid the application of federal law and the uniformity principles of maritime law adhered to by this Court and by Congress in its enactment of 46 U.S.C. § 763a since prescription is a substantive right and the principle of uniformity in maritime law mandates that federal procedural law controls a maritime case filed in state court?

2. Should a seaman filing a complaint in state court under the general maritime law be able to avoid the commencement of the action for six years after his cause of action arose by not effecting service of process until almost three years after he filed his suit?

3. Is it reasonable for a seaman filing a complaint in state court under the general maritime law to prolong service of process for almost six years from the time his cause of action arose and three years after the filing of his complaint?

LIST OF PARTIES

The following are the parties to this proceeding:

1. Robert Myers
   Plaintiff-respondent

2. Chevron U.S.A. Production Co.
   Defendant-petitioner[1]

3. Diamond Offshore Drilling, Inc.
   Diamond Offshore Company
   Diamond Offshore Drilling Services, Inc.
   Diamond Offshore Management Company
   Defendants

---

[1] Pursuant to Supreme Court Rule 29.6, petitioner, Chevron U.S.A. Production Co., states that it is a division of Chevron U.S.A. Inc., a wholly-owned subsidiary of Chevron Corporation. Chevron U.S.A. Production Co. has no subsidiary companies.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

DECISIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISION INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 4

I. PRESCRIPTION IS A SUBSTANTIVE RIGHT AND THE PRINCIPLE OF UNIFORMITY IN MARITIME LAW MANDATES THAT FEDERAL PROCEDURAL LAW CONTROLS A MARITIME CASE FILED IN STATE COURT 5

A. By Its Enactment of 46 U.S.C. § 763a, Congress Sought to Maintain National Uniformity in All Maritime Tort Cases 5

B. This Court Held That State Statutes of Limitation, Tolling Statutes, and Other Savings Statutes Have No Application Where Federal Uniformity Is Required and Therefore, the Application of Federal Law Is Mandated 7

C. Cases Interpreting FELA Are Persuasive Authority in This General Maritime Law Case 8

D. State Courts Cannot through Their Procedural Rules Substantially Alter the Rights of the Litigants; Therefore, State Courts Deciding Maritime Causes of Action Must Apply Federal Law 10

TABLE OF CONTENTS – Continued

Page

E. Federal Courts Have Denied the Application of State Rules in Maritime Cases, Where the Application of Those Rules Results in Non-Uniform Application of Federal Maritime Rules..... 12

II. A MARITIME ACTION IS NOT COMMENCED UNTIL THERE IS SERVICE OF PROCESS..... 15

A. The Relevant Inquiry Is Not What "Commenced" Means under State Law but What "Commenced" Means for Purposes of 46 U.S.C. § 763a..... 15

B. This Court Held That the Period of Time within Which an Action May be Commenced Is a Material Element in the Uniformity Principles of the Maritime Law..... 18

C. This Court Held That an Action Is "Commenced" under Federal Law when Service of Process is Issued out of a State Court.. 19

III. SERVICE OF PROCESS SIX YEARS AFTER AN ACTION AROSE IS NOT REASONABLE..... 20

Even if the Plaintiff "Commenced" His Action Timely, the Case Still Should Be Dismissed for the Failure to Request Service of Process within a Reasonable Time, since Such Failure Has Affected Every Aspect of Chevron's Preparation for Trial.. 20

CONCLUSION..... 25

TABLE OF AUTHORITIES

Page

CASES

Abbott v. State of Alaska, 979 P.2d 994 (Alaska 1999) 11

Benoit v. Fireman's Fund, 361 So.2d 1332 (La. App. 3 Cir. 1978) 10

Bennett v. Consolidated Rail Corp., No. 88-3337, 1988 U.S. Dist. LEXIS 10012 (E.D. Pa. Sept. 12, 1988) 20

Brooks v. Southern Pac. Co., 105 Ariz. 442, 466 P.2d 736 (Az. 1970) 9

Burnett v. New York Cent. R.R., 380 U.S. 424 (1965) ..... *passim*

Butler v. American Trawler Co., 887 F.2d 20 (1st Cir. 1989) 12, 13

Chesapeake & O. Ry. Co. v. Miles, 249 S.W.2d 160 (Ky. 1952) 9

Covey v. Arkansas River Co., 865 F.2d 660 (5th Cir. 1989) 23

Davis v. Newpark Shipbuilding & Repair, Inc. 659 F.Supp. 155 (E.D. Tex. 1987) 14

Davis-Wilson v. Hilton Hotels Corp., 106 F.R.D. 505 (E.D. La. 1985) 23

Engel v. Davenport, 271 U.S. 33 (1926) 18

Ford v. Atkinson Dredging Co., 222 Ga. App. 593, 474 S.E.2d 652 (Ga. Ct. App. 1996) 11

Frame v. City of New York, 34 F.Supp. 194 (S.D. N.Y. 1940) 6

Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942) 9, 10

TABLE OF AUTHORITIES – Continued

Page

Herb v. Pitcairn, 325 U.S. 77 (1945) 7, 19, 20, 23, 25

Huett v. Illinois Cent. Gulf R.R. Co., 268 Ill. App. 3d 494, 644 N.E.2d 474 (Ill. App. Ct. 1994) 9

Janus v. J.M. Barbe Co., 57 F.R.D. 539 (N.D. Ohio 1972) 21

Johnson v. Acadiana Ry. Co., 96-263 (La. App. 3 Cir. 4/16/97), 693 So.2d 226 19

Jordan v. United States, 694 F.2d 833 (D.C. Cir. 1982) 21

Konrad v. South Carolina Elec. and Gas Co., 308 S.C. 167, 417 S.E.2d 557 (S.C. 1992) 11

Lerner v. Karageorgis Lines, Inc., 66 N.Y.2d 479, 488 N.E.2d 479 (N.Y. 1985) 11

Logwood v. Apollo Marine Specialists, Inc., 772 F.Supp. 925 (E.D. La. 1991) 14

Maxwell v. Swain, 833 F.2d 1177 (5th Cir. 1987) 5, 12, 13, 21, 22, 23, 24

McKean v. Skipper Hydraulic, Inc., 592 So.2d 433 (La. App. 5 Cir. 1991) 24

Midstate Horticultural Co. v. Pennsylvania R. Co., 320 U.S. 356 (1943) 16

Miles v. Apex Marine Corp., 498 U.S. 19 (1990) 5, 6, 8, 9, 25

Mink v. Genmar Ind., Inc., 29 F.3d 1543 (11th Cir. 1994) 12, 14

Noakes v. National R.R. Passenger Corp., 312 Ill. App. 3d 965, 729 N.E.2d 59 (Ill. App. Ct. 2000) 9

Offshore Logistics v. Tallentire, 477 U.S. 207 (1986) 10

TABLE OF AUTHORITIES – Continued

Page

Order of R.R. Tel. v. Railway Express Agency, Inc., 321 U.S. 342 (1944) 17

Paige v. City of New Orleans, Civ. No. 87-0754, 1989 U.S. Dist. LEXIS 10193 (E.D. La., Sept. 1, 1988) 24

People of the Living God v. Star Towing Co., 289 F.Supp. 635 (E.D. La. 1968) 14

Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953) ..10, 12

Porter v. Beaumont Enter. & Journal, 743 F.2d 269 (5th Cir. 1984)..... 23

Prather v. Raymond Const. Co., Inc., 470 F.Supp. 278 (N.D. Ga. 1983)..... 21

Prejean v. Industrial Cleanup, 98-0948 (La. 12/1/98) 721 So.2d 1273 .....5, 11

Puerto Rico Marine Mgmt., Inc. v. Molac Imports, Inc., 594 F.Supp. 648 (D.P.R. 1984) 12

Ratcliffe v. Insurance Co. of N. Am., 482 F.Supp. 759 (E.D. Pa. 1980) 21

Ross v. Union Pac. R.R. Co., 906 S.W.2d 711 (Mo. 1995)..... 9

Shannon v. Boston & Maine R.R., 77 N.H. 349, 92 A. 167 (N.H. 1914) 9

Smith v. Commodore Cruise Line Ltd., 124 F.Supp.2d 150 (S.D. N.Y. 2000) 14

TAG/ICIB Servs., Inc. v. Pan Am. Grain Co., 215 F.3d 172 (1st Cir. 2000)..... 12

TABLE OF AUTHORITIES – Continued

Page

Terminal Ry. of the Alabama State Docks Dep't v. Mason, 620 So.2d 637 (Ala. 1993)..... 19

Townsend v. Union Pac. R.R. Co., 968 S.W.2d 767 (Mo. Ct. App. 1998)..... 9

United States v. Wahl, 483 F.2d 285 (6th Cir. 1978)..... 21

Vaught v. Virginia & Southwestern Rail Co., 132 Tenn. 679, 179 S.W. 314 (Tenn. 1915)..... 9

Williams v. E.I. DuPont de Nemours Co., 581 F.Supp 791 (D.C. Tenn. 1983)..... 21

Wilson v. Zapata Off-Shore Co., 939 F.2d 260 (5th Cir. 1991)..... 20

Windbrooke Dev. Corp. v. Environmental Enter., Inc., 424 F.2d 461 (5th Cir. 1975)..... 21

STATUTES AND RULES

28 U.S.C. § 1257..... 1

45 U.S.C. §§ 51 to 60 (1999)..... 7

45 U.S.C. § 56 (1938)..... 19

46 U.S.C. § 688 (1999)..... 8

46 U.S.C. § 763a (1999)..... *passim*

Fed. R. Civ. P. 3..... 21

LA. CIV. CODE ANN. art. 3462..... 11

LA. CODE CIV. PROC. ANN. art. 421..... 11

Supreme Court Rule 10..... 1

Supreme Court Rule 29.6..... ii

TABLE OF AUTHORITIES – Continued

Page

LEGISLATIVE MATERIALS

H.R. Rep. No. 737, 96th Cong., 2d Sess. 1..... 5

SECONDARY SOURCES

Wright and Miller, Federal Practice and Procedure § 1053 (1987)..... 21

DECISIONS BELOW

The order and reasons of the Fifteenth Judicial District Court for the Parish of Lafayette, State of Louisiana, are not reported and are reproduced in Appendix A (App. pp. 1a-2a).

The Louisiana Court of Appeal for the Third Circuit's denial of Chevron U.S.A. Production Co.'s Application for Supervisory Writ is not reported and is reproduced in Appendix B (App. p. 3a).

The Louisiana Supreme Court's denial of Chevron U.S.A. Production Co.'s Application for Writ of Certiorari or Review is not reported and is reproduced in Appendix C (App. p. 4a).

JURISDICTION

On March 16, 2001, the Supreme Court of Louisiana denied Petitioners' application for writ of certiorari or review. Petitioners now file their petition for writ of certiorari, pursuant to 28 U.S.C. § 1257 and Rule 10 of the Rules of the Supreme Court.

STATUTORY PROVISION INVOLVED

The following statute of the United States of America is involved in this petition:

46 U.S.C. § 763a:

> Unless otherwise specified by law, a suit for recovery of damages for personal injury or

death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued.

STATEMENT OF THE CASE

Robert Myers, a seaman employed by Seabulk Offshore, Ltd. (referred to hereinafter as "Seabulk"), was a crewmember aboard the M/V SEABULK ALABAMA in March, 1994. Plaintiff filed a petition for damages on February 25, 1997, against numerous anonymous defendants alleging that on or about March 5, 1994, he slipped, fell and injured his back while aboard the M/V SEABULK ALABAMA. At the time of the accident, Seabulk was working for Chevron U.S.A. Production Co. (referred to hereinafter as "Chevron"). Chevron and Seabulk were engaged in activities pursuant to a Blanket Time Charter between them. On March 3, 1997, plaintiff filed an amended petition for damages, specifically naming Chevron, Diamond Offshore Drilling, Inc., Diamond Offshore Company, Diamond Offshore Drilling Services, Inc. and Diamond Offshore Management Company (referred to collectively hereinafter as "Diamond"), and Seabulk. In his amended petition for damages, plaintiff asserted that his claims arose under the Jones Act and the general maritime law. In his second amended petition, filed on February 24, 2000, plaintiff dismissed Seabulk but continued to pursue Chevron and Diamond. Prior to this date, no attempt was made by plaintiff to serve Chevron or put Chevron on notice of his claims against it. Plaintiff requested service of process on Chevron February 24,

2000, almost six years after his cause of action accrued and nearly three years after suit was first filed. Chevron was actually served on March 3, 2000. Prior to this date, Chevron had not received any knowledge of any legal claims asserted by the plaintiff.

In the Fifteenth Judicial District for the Parish of Lafayette, State of Louisiana, Chevron presented that court with its Peremptory Exception of Prescription on May 26, 2000. In that Exception, Chevron relied on federal law to support its exception of prescription on two bases: 1) the failure of the plaintiff to "commence" his action timely under federal maritime law and 2) in the alternative, that even if the action was timely commenced, that service of process was not made within a reasonable time. In Chevron's Supplemental Memorandum in Support of its Peremptory Exception of Prescription, Chevron reiterated its position that federal maritime law applies to a maritime cause of action. The district court denied Chevron's Exception of Prescription on the basis that Louisiana law applied to the prescription issue. Applying Louisiana law, the court found that prescription was interrupted when the action was filed against Chevron, rather than when Chevron was served, nearly six years after the accident. A minute entry was entered September 27, 2000 (Appendix A, App. pp. 1a-2a), evidencing the denial.

By application for a supervisory writ to the Louisiana Court of Appeal for the Third Circuit, Chevron asked for application of federal law to the maritime cause of action. On December 15, 2000, that court denied the writ stating only, "There is no error in the trial court's ruling."

(Appendix B, App. p. 3a). Chevron again asked for application of federal law by supervisory writ to the Louisiana Supreme Court, who also denied the relief sought (Appendix C, App. p. 4a).

Chevron submits that the district court, Louisiana Third Circuit Court of Appeal and the Louisiana Supreme Court's rulings are contrary to decisions of this Court and other federal and state jurisprudence. Chevron seeks a writ of certiorari from this Honorable Court to decide an important issue of federal maritime law and resolve the inherent conflict created when a maritime case is brought in state court.

REASONS FOR GRANTING THE PETITION

The question presented to this Court, which was raised in the courts below, is a purely legal one and can be simply stated: Should a seaman who files a complaint under the general maritime law in a state court, be able to hide behind generous state rules, thereby avoiding the application of federal law and the uniformity principles of maritime law adhered to by this Court and by Congress in its enactment of 46 U.S.C. § 763a. The relevant decisional law of this Court and other lower courts as well as a review of 46 U.S.C. § 763a and its legislative history strongly indicate that a seaman should not be able to utilize state rules to avoid federal law. Allowing such actions by plaintiffs creates non-uniformity in maritime law and may encourage forum shopping by plaintiffs, results which this Court and Congress have sought to avoid.

Here, by its denial of Chevron's application for supervisory writs, the Louisiana Supreme Court effectively agreed with the decision of the lower court which applied state, not federal law to this maritime cause of action. Such a decision is in conflict with this Court's decision in *Burnett v. New York Cent. R.R.*, 380 U.S. 424 (1965). The decision is also in conflict with the intent of Congress when it enacted 46 U.S.C. § 763a, the United States Court of Appeal for the Fifth Circuit's decision in *Maxwell v. Swain*, 833 F.2d 1177 (5th Cir. 1987), and the Louisiana Supreme Court's own earlier decision in *Prejean v. Industrial Cleanup*, 98-0948 (La. 12/1/98) 721 So.2d 1273.

I. PRESCRIPTION IS A SUBSTANTIVE RIGHT AND THE PRINCIPLE OF UNIFORMITY IN MARITIME LAW MANDATES THAT FEDERAL PROCEDURAL LAW CONTROLS A MARITIME CASE FILED IN STATE COURT.

A. By Its Enactment of 46 U.S.C. § 763a, Congress Sought to Maintain National Uniformity in All Maritime Tort Cases.

The stated intent of 46 U.S.C. § 763a is "To provide a uniform national three-year statute of limitations, in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes." H.R. Rep. No. 737, 96th Cong., 2d Sess. 1. This Court recognized in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990):

> In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory

> remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress remains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Miles, 498 U.S. at 27.

Thus, where Congress has legislated and evidenced its intent for national uniformity, *all* courts must look to the statutes and stay within the limits of Congress.

> [W]hile limited changes and modifications in the maritime law may be made by state legislation [citations omitted], such legislation may not validly contravene the essential purpose expressed by an act of Congress, nor work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations. [citations omitted]

Frame v. City of New York, 34 F.Supp. 194, 196 (S.D.N.Y. 1940). Reversible error is made when a state court applies its own rules to an area expressly defined by Congress as mandating national uniformity.

B. This Court Held That State Statutes of Limitation, Tolling Statutes, and Other Savings Statutes Have No Application where Federal Uniformity Is Required and Therefore, the Application of Federal Law Is Mandated.

This Court has long recognized the uniform operation of statutes of limitation under the Federal Employers' Liability Act (referred to hereinafter as "FELA"), 45 U.S.C. §§ 51 to 60 (1999). In *Burnett*, the plaintiff filed suit under FELA in Ohio state court and properly served the defendant with process. The action was later dismissed because venue was improper under state procedural law; eight days later, the plaintiff filed suit in federal court but after the applicable FELA statute of limitations. This Court held that the action was properly commenced in state court since "process had been adequate to bring in the parties and to start the case on a course of judicial handling" and therefore, the action was timely under FELA. *Burnett*, 380 U.S. at 426, (citing *Herb v. Pitcairn*, 325 U.S. 77, 79).

The importance of *Burnett* to this case is that while this Court did find that the action was tolled by the filing in state court, the Court based its decision on the fact that Congress did not intend the statutes of limitation set forth in FELA to bar plaintiffs who bring their actions timely but whose suits were required to be dismissed by the state procedural rules. This Court stated:

> To allow the limitation provision to incorporate state savings statutes would produce non-uniform periods of limitation in the several States. The scope of such statutes and the length of additional time they allow vary considerably

> from State to State. . . . Moreover, not all States have savings statutes. . . . This Court has long recognized that the FELA has a uniform operation, and neither is nor can be deflected therefrom by local statutes. [citation omitted] . . . [T]he period of time within which an action may be commenced is a material element in . . . [a] uniformity of operation which Congress would not wish to be destroyed by the varying provisions in state statutes of limitation. . . . [citation omitted]. The incorporation of variant state savings statutes would defeat the aim of a federal limitation provision designed to produce national uniformity.

Burnett, 380 U.S. at 433.

Therefore, the *Burnett* Court held that when a plaintiff begins a timely FELA action in a state court and **serves the defendant** but the case is later dismissed under a state procedural rule, the FELA limitation period is tolled during the pendency of the state suit because **federal law controls whether or not the action was properly commenced**. The relevant inquiry is not state law.

C. Cases Interpreting FELA Are Persuasive Authority in This General Maritime Law Case.

The substantive recovery provisions of FELA were incorporated unaltered into the Jones Act, 46 U.S.C. § 688 (1999). As this Court stated in *Miles*:

> Enacted in 1920, the Jones Act makes applicable to seamen the substantive recovery provisions of the older FELA. See 46 U.S.C. § 688.

Miles, 498 U.S. at 32. In his oppositions to writ applications, the plaintiff attempted to avoid the application of FELA and Jones Act case law by arguing that his cause of action was not under the Jones Act but under general maritime law. Although the remaining claims in this case are not claims under the Jones Act, 46 U.S.C. § 763a applies to all maritime torts, and cases which interpreted the FELA limitations periods would therefore, be persuasive authority in this maritime case. *See, e.g., Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942).

The idea that state statutes of limitations and other savings statutes have no applicability in a FELA action is not a novel one, and state courts throughout the country have held accordingly. *See, Chesapeake & O. Ry. Co. v. Miles*, 249 S.W.2d 160 (Ky. 1952); *Noakes v. National R.R. Passenger Corp.*, 312 Ill.App. 3d 965, 729 N.E.2d 59 (Ill. App. Ct. 2000); *Townsend v. Union Pac. R.R. Co.*, 968 S.W.2d 767 (Mo. Ct. App. 1998); *Ross v. Union Pac. R.R. Co.*, 906 S.W.2d 711 (Mo. 1995); *Brooks v. Southern Pac. Co.*, 105 Ariz. 442, 466 P.2d 736 (Az. 1970); *Shannon v. Boston & Maine R.R.*, 77 N.H. 349, 92 A. 167 (N.H. 1914); *Vaught v. Virginia & Southwestern Rail Co.*, 132 Tenn. 679, 179 S.W. 314 (Tenn. 1915); *Huett v. Illinois Cent. Gulf R.R. Co.*, 268 Ill. App. 3d 494, 644 N.E.2d 474 (Ill. App. Ct. 1994).

D. State Courts Cannot through Their Procedural Rules Substantially Alter the Rights of the Litigants; Therefore, State Courts Deciding Maritime Causes of Action Must Apply Federal Law.

Any argument set forth that state procedural rules apply to this maritime cause of action fails because this Court held that a maritime tort is an action placed under the national power to control in its **substantive** and **procedural** features. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409 (1953) (emphasis added). While state courts are authorized to entertain maritime causes of action, "the extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-Erie' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards." *Offshore Logistics v. Tallentire*, 477 U.S. 207, 223 (1986). Substantive maritime law controls in state court, and states cannot by their procedural practices substantially alter the rights of the litigants. *Garrett*, 317 U.S. at 245. Therefore, in some instances, federal procedural law controls in state court. *Benoit v. Fireman's Fund*, 361 So.2d 1332 (La.App. 3 Cir. 1978). This maritime case is one of those instances.

The highest courts of numerous states have applied federal procedural law to maritime cases pending in state court. For example, the Louisiana Supreme Court held that when a general maritime tort is alleged, the effect of the lapse of time on the viability of the action is determined by the standards of federal maritime law because the right to bar an action for the passage of time is a

substantive right. *Prejean*, 721 So.2d at 1276. The Supreme Court of Alaska found that the Congressional policy of uniformity under the maritime law would be defeated if each state's diverse laws were used to determine when the limitation period on a federal cause of action is tolled, interrupted or suspended. *Abbott v. State of Alaska*, 979 P.2d 994 (Alaska 1999).

In *Ford v. Atkinson Dredging Co.*, 222 Ga.App. 593, 474 S.E.2d 652 (Ga. Ct. App. 1996), the court found that the Georgia law which tolled the statute of limitations had no place in an action under the general maritime law, and the distinction between substantive and procedural law was of no moment because the Constitution placed maritime claims under national power in its substantive and procedural features. *See also, Konrad v. South Carolina Elec. and Gas Co.*, 308 S.C. 167, 417 S.E.2d 557 (S.C. 1992); *Lerner v. Karageorgis Lines, Inc.*, 66 N.Y.2d 479, 488 N.E.2d 479 (N.Y. 1985).

In addition to the legislative history, the above cases demonstrate that state savings statutes have no application in a maritime case whether that case is filed in state or federal court. Under Louisiana law, prescription is interrupted when the action is commenced by filing suit in a court of proper venue even if service of process is not made within the prescriptive period. LA. CIV. CODE ANN. art. 3462; LA. CODE CIV. PROC. ANN. art. 421. This state law operates as a savings statute which impedes a defendant's ability to provide an adequate defense because under such a law, the defendant may not be aware of the claim for years and at that point, may no longer be able to prepare an adequate defense. This law

results in an outcome completely contrary to the uniformity principles of maritime law set forth by this Court, Congress, and other lower courts.

E. Federal Courts Have Denied the Application of State Rules in Maritime Cases, Where the Application of Those Rules Results in Non-Uniform Application of Federal Maritime Rules.

Like state courts, federal courts have also refused to apply state rules, whether those rules are substantive or procedural, to a maritime cause of action. The reasoning is simple: Federal courts should protect the national interests since state legislatures do not devise their limitations periods with national interests in mind. *TAG/ICIB Servs., Inc. v. Pan Am. Grain Co.*, 215 F.3d 172 (1st Cir. 2000) (citing *Puerto Rico Marine Mgmt., Inc. v. Molac Imports, Inc.*, 594 F.Supp. 648, 651 (D.P.R. 1984)). The duty of the federal courts is to ensure that the importation of state law does not frustrate or interfere with the implementation of national policies. *TAG/ICIB Servs.*, 215 F.3d at 177. Furthermore, while states may sometimes supplement federal maritime policies, states cannot deprive a person of any substantial admiralty rights defined in acts of Congress or by interpretative decisions of courts. *Pope & Talbot*, 346 U.S. at 410.

In addition to its decisions in *Burnett*, this Court is guided by the pronouncements of the other United States Circuit Courts in *Maxwell*, 833 F.2d at 1178, *Butler v. American Trawler Co.*, 887 F.2d 20 (1st Cir. 1989), and *Mink v. Genmar Ind., Inc.*, 29 F.3d 1543 (11th Cir. 1994).

In *Maxwell, supra,* the Fifth Circuit was faced with the question: whether filing a state court suit based on a maritime cause of action tolled the statute of limitations provided in 46 U.S.C. § 763a, even though service did not occur within the limitation period. Quoting much of the language of this Court in *Burnett,* the Fifth Circuit refused the application of state procedural law and applied federal law.

Reiterating that 46 U.S.C. § 763a applies to **all maritime personal injury claims,** in *Butler,* the United States Court of Appeals for the First Circuit noted that a maritime tort is one which the Constitution placed under national powers to control in its **substantive as well as procedural features,** *Butler,* 887 F.2d at 21 (emphasis added), and is

> aimed at eliminating the forum shopping and the presentation of stale claims which can result when claimants seek to bring their suit in the jurisdiction having the most advantageous procedural rules. . . . Congress should take action to eliminate the inherent unfairness that exists when three different claimants may be subject to three different sets of rules merely because they have utilized different legal tools.

Butler, 887 F.2d at 22. The language and legislative history of the statute suggest that Congress enacted the statutes to deal with non-uniformity and the problems created when courts applied the federal doctrine of laches using different local limitations statutes to decide the cases. *See Id.* Therefore, federal law applied to the maritime cause of action.

In *Mink,* the Eleventh Circuit refused to allow the plaintiff to recast his maritime claim as a state contract cause of action because of the need for a uniform maritime standard. Allowing such a result would cause a disintegration in the federal interest in uniformity. *Mink,* 29 F.3d at 1549.

In addition to the United States Circuit Courts, lower federal courts have refused to permit the application of state law. One court has held that there is no room for the application of state tolling statutes in an admiralty action that contains its own statute of limitations complete with provisions for tolling. *People of the Living God v. Star Towing Co.,* 289 F.Supp. 635 (E.D. La. 1968). In *Living God,* the court refused to apply the Louisiana Civil Code Article which provided that a suit against one solidary obligor interrupts prescription as to all. Other courts reached similar conclusions; *see Logwood v. Apollo Marine Specialists, Inc.,* 772 F.Supp. 925 (E.D. La. 1991) and *Davis v. Newpark Shipbuilding & Repair, Inc.* 659 F.Supp. 155 (E.D. Tex. 1987).

While state courts can use their own procedural rules, they can do so only if they do not have substantive implications or have not been pre-empted by federal maritime law. *Smith v. Commodore Cruise Line Ltd.,* 124 F.Supp.2d 150, 155 (S.D.N.Y. 2000). Based on the express intent of Congress to eliminate non-uniformity in federal maritime law regarding the statute of limitations, it is difficult to conceive a situation where state procedural rules would apply in a maritime case if the application of that rule allows a defendant to be unaware of a lawsuit pending against him for years, through no fault of his

own. Such a procedural rule does have substantive implications and affects the defense of the defendant's case; such a rule has also been pre-empted by Congress in 46 U.S.C. § 763a in its endeavor to make defendants aware of any maritime causes of action within a three-year period.

II. A MARITIME ACTION IS NOT COMMENCED UNTIL THERE IS SERVICE OF PROCESS.

Since the trial court wrongfully decided that state law applied to this general maritime law case, that court never reached the issue of what "commenced" means under federal law or whether the plaintiff served Chevron within a reasonable period of time.

A. The Relevant Inquiry Is Not What "Commenced" Means under State Law but What "Commenced" Means for Purposes of 46 U.S.C. § 763a.

Because federal law applies to this maritime case, the Court today is faced not with what "commenced" means under state procedural law, but what "commenced" means for purposes of the federal statute of limitations applicable to maritime claims, found in 46 U.S.C. § 763a.

Plaintiff claimed in the lower courts that his action was properly "commenced" because he filed suit within the three year statute of limitations period provided in 46 U.S.C. § 763a. When determining whether a statute of limitations is to be tolled, the basic question is one of legislative intent and whether the right shall be enforceable after the prescribed time. *Burnett*, 380 U.S. at 426

(citing *Midstate Horticultural Co. v. Pennsylvania R. Co.*, 320 U.S. 356, 360). The "basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances." *Burnett*, 380 U.S. at 427. Whether the provision is substantive or procedural does not determine whether the period can be extended. *Burnett*, 380 U.S. at 426-427.

When determining Congressional intent, the purposes and policies underlying the limitation provision are reviewed. *Burnett*, 380 U.S. at 427. Statutes of limitation are primarily designed to assure fairness to defendants; such statutes prevent surprises of claims which have been "allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett*, 380 U.S. at 428. A major reason for having a federal limitation period under FELA (and hence, under the general maritime law) was to achieve national uniformity. *Burnett*, 380 U.S. at 434.

Similarly, in this case and as discussed in Section I.A., above, the applicable statute of limitations, 46 U.S.C. § 763a, is one designed to achieve national uniformity and avoid the application of inconsistent state statutes, some of which extended the limitations period for maritime claims and some of which shortened the period. In enacting this statute, Congress did not intend that "commencement" of an action would vary from case to case depending on the state where the case was filed. To the contrary, Congress wanted to alleviate such problems.

Therefore, "commencement" for purposes of 46 U.S.C. § 763a is "commencement" as Congress intended it. At the time of the enactment of 46 U.S.C. § 763a,

Congress knew that various state statute of limitations, other procedural laws and the doctrine of laches created inconsistencies in maritime cases. Congress knew that many states had different requirements for what "commenced" a cause of action, tolling the statute of limitations. Congress intended in enacting the statute that defendants be put on notice and made aware of their rights within a reasonable time without being subject to various state rules which extend or shorten the limitation periods. For decades, this Court recognized the importance of putting defendants on notice of the claims against them. *See, e.g., Burnett,* 380 U.S. at 428 (citing *Order of R.R. Tel. v. Railway Express Agency, Inc.,* 321 U.S. 342, 348-9).

This Court would create an anomaly today if it were to allow "commencement" of an action to vary from state to state since some states may require service of process within one time frame while other courts may require service within a reasonable time or while others may require no service in order to commence an action. The logical conclusion based on the Congressional history of the enactment of the statute of limitations applicable to maritime claims is to decide that "commencement" of an action as Congress intended it, requires a defendant be put on notice of the claims against him within three years from when the cause of action arose.

B. This Court Held That the Period of Time within Which an Action May Be Commenced Is a Material Element in the Uniformity Principles of the Maritime Law.

Years ago, this Court recognized that the period of time within which an action may be commenced is a material element in the uniformity of operation of the maritime law. *Engel v. Davenport*, 271 U.S. 33 (1926). In *Engel*, this Court decided that the provisions of the Merchant Marine Act dealing with commencement of an action which incorporated the sections of the Employer's Liability Act were substantive rights. *Id.* at 38. And its provisions were to have "a uniform operation which could not be deflected from by 'local statutes or local views of common law rules.' " *Id.* at 39. Because Congress exercised its paramount authority in the maritime law in the Merchant Marine Act, the provision relating to the time for **commencing an action**, was a material provision affecting the substantive rights and therefore, must control in an action in state court regardless of any varying provisions of state statutes of limitations. *Id.*

Similarly, in the exercise of its paramount authority in the maritime law, Congress enacted the statute of limitation set forth in 46 U.S.C. § 763a; thus, the provisions for commencement of an action affect substantive rights and must control in an action in state court.

C. This Court Held That an Action Is "Commenced" under Federal Law when Service of Process Is Issued out of a State Court.

An action is commenced under federal law when "instituted by service of process issued out of a state court." *Herb v. Pitcairn*, 325 U.S. 77, 78-79 (1945). In *Herb*, this Court interpreted the FELA statute of limitations[1] and found that "when process has been adequate to bring in the parties and to start the case on a course of judicial handling which may lead to final judgment *without issuance of new initial process*, it is enough to commence the action within the federal statute." *Herb*, 325 U.S. at 79 (emphasis added). Thus, since state law directed a transfer to another court, the suit did not have to be commenced in a court with the power to proceed to final judgment because the process was adequate to bring in the parties and actively begin to prosecute the case to judgment, and no new service of process was required. In *Herb*, the deciding factor was that service of process was issued; this Court refused to allow state law to direct the outcome of the litigation since the FELA statute of limitations was applicable.

This Court approved of *Herb* in *Burnett*, 380 U.S. at 426. Other courts have noted their approval with this Court's decision in *Herb*. *See e.g., Johnson v. Acadiana Ry. Co.*, 96-263 (La.App. 3 Cir. 4/16/97) 693 So. 2d 226; *Terminal Ry. of the Alabama State Docks Dep't v. Mason*, 620 So.2d

---

[1] The FELA statute of limitation at the time provided, "No action shall be maintained under this chapter unless commenced within two years from the day the cause of action accrued." 45 U.S.C. § 56 (1938).

637 (Ala. 1993); *Bennett v. Consolidated Rail Corp.*, No. 88-3337, 1988 U.S. Dist. LEXIS 10012, at *13 (E.D. Pa. Sept. 12, 1988).

Since cases interpreting the FELA rule of prescription are applicable in this maritime case, as discussed in Section I.C., above, this Court's interpretation in *Herb* is controlling. The plaintiff has the burden to prove that the cause of action was commenced within the three year limitation period. *Wilson v. Zapata Off-Shore Co.*, 939 F.2d 260 (5th Cir. 1991). The plaintiff cannot meet this burden. The plaintiff may have filed his suit within the three year statute of limitations provided in 46 U.S.C. § 763a; however, the plaintiff did not request service on Chevron until almost six years after his cause of action arose and three years after filing his original suit. Therefore, unlike the facts in *Herb*, the process was not adequate to start the case on a course of judicial handling or bring in the parties; accordingly, the plaintiff's claims must be dismissed for the failure to properly commence the action within the statute of limitations.

III. SERVICE OF PROCESS SIX YEARS AFTER AN ACTION AROSE IS NOT REASONABLE.

Even if the Plaintiff "Commenced" His Action Timely, the Case Still Should Be Dismissed for the Failure to Request Service of Process within a Reasonable Time, since Such Failure Has Affected Every Aspect of Chevron's Preparation for Trial.

Federal law is applicable to this maritime cause of action and provides that federal limitations periods in maritime cases are tolled from the date that suit is filed as

long as service is effected within a reasonable time. *Maxwell*, 833 F.2d at 1178 (emphasis added)[2]. In *Maxwell*, the plaintiff filed suit under the Jones Act in federal court in Texas and Louisiana state court. The federal case was dismissed for lack of prosecution and the state case for improper venue. The plaintiff then filed suit in Louisiana federal court after the three year statute of limitations had run. Whether the state suit tolled the statute of limitations because of the failure to serve process within the statutory period was the question before the Fifth Circuit. Applying federal law, the court decided that the limitation period was tolled from the date that suit was filed as long as service of process occurred within a reasonable time. The plaintiff sent certified letters notifying the defendant of suit, contacted government offices seeking the defendant's whereabouts, and appointed a private process server before the defendant was finally served. In light of all of the plaintiff's efforts, the court held that the defendant had been served within a reasonable time and his suit was not barred by the statute of limitations.

Specifically, the Appellate Court acknowledged that the plaintiff did not sleep on his rights, the defendant had

---

[2] (Citing *Jordan v. United States*, 694 F.2d 833 (D.C. Cir. 1982); *United States v. Wahl*, 583 F.2d 285 (6th Cir. 1978); *Windbrooke Dev. Corp. v. Environmental Enter., Inc.*, 524 F.2d 461 (5th Cir. 1975); *Williams v. E.I. Du Pont de Nemours Co.*, 581 F.Supp. 791 (D.C. Tenn. 1983); *Prather v. Raymond Const. Co.*, 570 F.Supp. 278 (N.D. Ga. 1983); *Ratcliffe v. Insurance Co. of N. Am.*, 482 F.Supp. 759 (E.D. Pa. 1980); *Janus v. J.M. Barbe Co.*, 57 F.R.D. 539 (N.D. Ohio 1972); Fed. R. Civ. P. 3; Wright and Miller, Federal Practice and Procedure § 1053 (1987)).

notice within the limitation period although not served within that period, and the difficulty in effecting service was not for the plaintiff's lack of effort. Only this convergence of facts was sufficient to overcome the

> strong policy of repose . . . to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim *it is unjust not to put the adversary on notice* to defend within the period of limitation *and* that *the right to be free of stale claims in time comes to prevail over the right to prosecute them.*

Maxwell, 833 F.2d at 1178 (emphasis added).

While ordinarily service of process issuance is necessary to commence an action, *Maxwell* recognizes an expansionist view of the requirement to begin to prosecute a suit to judgment. Thus, the Fifth Circuit recognized that strict application of this rule may, at times, operate to unfairly deprive plaintiffs of their rights. A statute of limitations is designed to place defendants on notice; but in some cases, an exception must apply, otherwise the plaintiff's most diligent efforts could preclude the plaintiff from tolling the statute of limitations.

Unlike the plaintiff in *Maxwell*, the plaintiff in this case did not even request service of process for almost six years from when his cause of action arose and three years from the date he filed his initial complaint. Here, there is no one extenuating fact, let alone the convergence of facts present in *Maxwell* – issuance of service, actual notice to the defendant and extraordinary effort to serve – which

the Fifth Circuit allowed to form an exception of this "strong policy of repose." Whether *Herb* or *Maxwell* applies, neither case helps the plaintiff in his endeavor to toll the statute of limitations.

The decision of the Louisiana Supreme Court in its denial of the writ application filed by Chevron is inconsistent with the United States Court of Appeal for the Fifth Circuit's decision in *Maxwell* since federal law is applicable and under federal law service of process is required within a reasonable time in order to toll the statute of limitations.

The reason for service is to ensure that defendants are promptly and effectively notified that an action is pending against them. *Davis-Wilson v. Hilton Hotels Corp.*, 106 F.R.D. 505 (E.D. La. 1985). A delay in service affects every aspect of a defendant's preparation for trial. *Id.* Furthermore, a delay between filing and service should be viewed more seriously than a delay of the same period occurring after service of process. *Porter v. Beaumont Enter. & Journal*, 743 F.2d 269, 272 (5th Cir. 1984). A common maxim is that equity is not intended for those who sleep on their rights. *Covey v. Arkansas River Co.*, 865 F.2d 660, 662 (5th Cir. 1989).

What may constitute a reasonable time for service of process must be determined on a "case-by-case" basis.

Maxwell, 833 F.2d at 1179.[3] Even a cursory review of the facts of this case demonstrate that service of process could not have been made within a reasonable period of time where service was made almost six years from when the cause of action arose, three years from when the limitations period expired, and three years from the filing of the initial complaint. This Court is not faced with a "phantom" defendant who may move from place to place, hide to avoid service, or otherwise evade service.

Application of 46 U.S.C. § 763a to a maritime cause of action whether the action is filed in federal or state court is mandated; yet, when such an action is filed in state court, some courts apply federal procedural law while others improperly apply state procedural law. Such occurrences are exactly the concerns Congress had in its enactment of 46 U.S.C. § 763a. Besides being concerned with uniformity in the maritime law, Congress was concerned with defendants not being put on notice of their claims. The results are illogical when Louisiana procedural law is applied to this case. While 46 U.S.C. § 763a applies because of uniformity principles and Congressional concerns, these concerns should not be put aside because the action is filed in state court. Defendants can be unaware of a pending lawsuit for years, merely because the plaintiff chose the forum most likely to allow

---

[3] Six months after the statute of limitations ran was an unreasonable period of time. *Paige v. City of New Orleans*, Civ. No. 87-0754, 1989 U.S. Dist. LEXIS 10193, at *4 (E.D. La. Sept. 1, 1988). Service five months after filing and twenty-two days after the statute of limitations ran was an unreasonable amount of time under federal law. *McKean v. Skipper Hydraulic, Inc.*, 592 So.2d 433 (La. App. 5 Cir. 1991).

claims "to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett*, 380 U.S. at 428.

CONCLUSION

We sail here in occupied waters. Unfortunately, these waters, rather than being smoothly settled by uniform maritime law, following the dictates of the appropriate Congressional enactment, are roiled by inconsistency, illogical reasoning, uncertainty, and a complete absence of the laudable and calming goals of uniformity. There is no reason for this situation in light of Congressional enactment and this Court's clear guidance in *Herb* and *Burnett*, and the uniformity principles reinforced in *Miles*. Unfortunately, what is clear at this point is that these navigational aids are being ignored and that the lower courts only can be put on the correct course by the intervention of this Court and the exercise of its appropriate authority.

It is respectfully submitted that in order to vindicate the goals of uniformity, logic in the law, and the proper deference to Congressional enactments, this Court should grant this petition for a writ of certiorari and decide whether a seaman filing a complaint in state court under the general maritime law can hide behind generous state

rules, thereby avoiding the application of federal law and the uniformity principles of maritime law.

Respectfully submitted,

NORMAN C. SULLIVAN, JR.
(*COUNSEL OF RECORD*)
GELPI SULLIVAN CARROLL
400 Poydras Street, Suite 2525
New Orleans, LA 70130
Telephone 504-524-9714
Fax 504-524-9653

Attorney for Petitioner,
Chevron U.S.A. Production Co.

June 12, 2001

No. _____

In The

Supreme Court of the United States

CHEVRON U.S.A. PRODUCTION CO.,

Petitioner,

versus

ROBERT MYERS,

Respondent.

On The Petition For Writ Of Certiorari To The Fifteenth Judicial District Court, Parish Of Lafayette, State Of Louisiana

APPENDIX

APPENDIX A

ROBERT MYERS	:	15TH JUDICIAL
VERSUS NO. 97-0897	:	DISTRICT COURT
RICHARD ROE, ET AL	:	PARISH OF LAFAYETTE
	:	STATE OF LOUISIANA

MINUTE ENTRY

(Filed Sep. 27, 2000)

This matter came before the Court on September 25, 2000, on an Exception of Prescription and an Exception of No Right of Action. The Court denied the Exception of Prescription in Open court and took the Exception of No Right of Action under advisement.

Exceptor claims that Plaintiff has released Chevron pursuant to a release of claims executed by Plaintiff in 1999.

Plaintiff does not dispute that Chevron was released in its capacity as "charterer" of the *Seabuck* [sic] *Alabama* in the Seaman's Release dated March 6, 1999. Plaintiff argues that Chevron is not entitled to any relief under the Release to the extent Chevron was acting in any capacity other than as charterer.

As the Release does not specifically name Chevron but releases "the charterer", I find the release operates only as a bar to claims against Chevron in its capacity as charterer of the *Seabuck* [sic] *Alabama*.

Accordingly, the Exception of No Right of Action which was agreed by counsel to be handled as an Exception of Res Judicata is hereby denied. (See *Graham v. Milky Way Barge, Inc.*, 811 F2d 881 (5th Cir. 1987); *Wilson*

v. Job, Inc., 958 F2d 653 (5th Cir. 1992), *Hogden v. Forrest Oil Corp.*, 87 F3d 1512 (5th Cir. 1996).)

September 26, 2000, at Crowley, Louisiana.

/s/ Glennon P. Everett
GLENNON P. EVERETT,
DISTRICT JUDGE

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

NO: CW 00-01538

ROBERT MYERS
VERSUS
RICHARD ROE, ET AL
FILED: 11/02/00

On application of Chevron U.S.A. Production Co. for SUPERVISORY WRIT in No. 97-0897-2B on the docket of the Fifteenth Judicial District, Parish of Lafayette, Hon. Glennon P. Everett.

Norman Charles Sullivan Jr. Rachel Marasa Azzarello	Counsel for: Chevron U.S.A. Production
Karl W. Bengtson	Counsel for: Robert Myers
Randall Kurt Theunissen	Counsel for: Diamond Offshore Drilling

Lake Charles, Louisiana, on December 15, 2000.

WRIT DENIED: There is no error in the trial court's ruling.

/s/ JDS
JDS

/s/ MTA
MTA

/s/ EAP
EAP

APPENDIX C

The Supreme Court of the State of Louisiana

ROBERT MYERS
VS. NO. 2001-CC-0136
RICHARD ROE, ET AL.

IN RE: Chevron U.S.A. Production Co.; – Defendant; Applying for Supervisory and/or Remedial Writs, Parish of Lafayette, 15th Judicial District Court Div. F, Nos. 97-0097; to the Court of Appeal, Third Circuit, No. CW 00-01538

March 16, 2001

Denied.

HTL
PFC
CDK
BJJ
JPV
CDT
JTK

Supreme Court of Louisiana
March 16, 2001

/s/ Rai T. Daigle
Deputy Clerk of Court
For the Court